Translated from the original French

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| R c. Petiquay | 2021 QCCQ 9064 |
| COURT OF QUÉBEC |
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| CANADA |
| PROVINCE OF QUEBEC |
| DISTRICT OF | **SAINT-MAURICE** |
| LOCALITY OF | **LA TUQUE** |
| “Criminal and Penal Division” |
| No.: | 425-01-010376-199425-01-010377-197 |
| DATE: | September 24, 2021 |
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| PRESIDING: | THE HONOURABLE | SIMON RICARD, J.C.Q. |
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| HER MAJESTY THE QUEEN |
| Complainant |
| v. |
| ROBBY PETIQUAY |
| Accused |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| **S E N T E N C I N G** |
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1. This is a hockey violence case.
2. Mr. Petiquay pleaded guilty to one charge of assault causing bodily harm, an incident that occurred during a Ligue de hockey senior AAA du Québec (LHSAAQ) game. In a second file, he also pleaded guilty to failing to comply with a probation order to which he was subject at the time of this same incident.
3. The act for which the offender was charged occurred during a general scuffle. Looking to fight, he charged at the victim, Julien Gauthier, and dealt him a violent blow to the face before the victim could even protect himself. In addition to the underhanded and violent punch, a video recording[[1]](#footnote-1) of the scene shows the victim collapsing hard onto the skating rink and the offender throwing himself on him.
4. Following this attack, the victim had to stop practising his favourite sport, and he still has significant after-effects.
5. The offender is an Aboriginal person. A presentencing report and a “*Gladue*” report were prepared for the Court.

**Positions of the parties**

1. The Crown seeks a sentence of 15 months’ imprisonment to be served in the community, arguing that it agreed to reduce the objective seriousness of the crime by changing the mode of prosecution to an offence punishable on summary conviction to allow the Court to impose this type of sentence. This suggestion would also recognize the intergenerational trauma experienced by Mr. Petiquay and his thus mitigated level of responsibility.
2. The Crown also argues that the Court should emphasize denunciation and deterrence when dealing with an offender who has been convicted for similar offences in the past.
3. The defence acknowledges the wrongfulness and seriousness of the act committed by the offender. However, counsel for the defence argues that the moral responsibility of his client should be analyzed taking into account the role played by both the team and the league in tolerating or even encouraging fights.
4. Relying on the “*Gladue*” report, which is described as positive, the defence argues that Mr. Petiquay’s profile justifies imposing a suspended sentence along with 50 hours of community service and prohibiting him from playing in a professional or semi-professional hockey league.

**Issue**

1. What is the just and appropriate sentence that should be imposed on Robby Petiquay?

**The principles and purposes of sentencing**

1. Sentencing is an individualized process. It is not an exact science or an inflexible predetermined procedure.[[2]](#footnote-2) Parliament has set out the principles and purposes of sentencing in s. 718 *et seq*. of the *Criminal Code*:

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

1. The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.[[3]](#footnote-3) A sentence should also be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
2. The Court also takes into account paragraphs (b) to (e) of s. 718.2 *Cr. C.* in its analysis when justified by the circumstances. Among them, parity of sentencing, the duty to consider less restrictive sanctions before depriving an offender of liberty and, more particularly with respect to Aboriginal offenders, all available sanctions, other than imprisonment, that are reasonable in the circumstances.[[4]](#footnote-4)

**ANALYSIS**

**Objective seriousness**

1. At the time the offence was committed on January 18, 2019, assault causing bodily harm was punishable by a maximum sentence of 18 months’ imprisonment. It is therefore possible to impose a term of imprisonment in the community according to the criteria set out in s. 742.1 of the *Criminal Code.*

**Subjective seriousness**

1. The crime occurred in the context of a Ligue de hockey senior AAA du Québec hockey game that took place at the Denis-Morel Coliseum in La Tuque. The offender was playing for the home team, the victim for the visiting team.
2. Robby Petiquay was hired by the Loups de La Tuque not for his talents as a hockey player, but rather for his talents as a fighter. His role was to [translation] “protect” the more talented players on his team. In fact, he is generally sent on the ice to confront the other team’s fighter.
3. During this game, a general scuffle broke out. According to the victim’s statement, the Loups de La Tuque’s coach allegedly ordered his players to [translation] “empty the benches”, which to them meant to all get on the ice to fight the other team.
4. According to certain unwritten rules, players who do not want to fight keep their helmets on or grab hold of a player from the other team without fighting. Conversely, those ready to fight take off their gloves and their helmets and look for an opponent. The offender was among those in the second category, and the victim, the first.
5. The images recorded that day from two different angles are of good quality and clearly show Robby Petiquay’s conduct and that of the victim. The images are disgraceful and shocking.
6. The players from both teams were on the ice, several were fighting, and others were holding them back by the jersey. The referees tried to control the situation, but they were overwhelmed. First, Robby Petiquay is seen hitting an opposing player who was already on the ground near the glass. The referee saw the situation and decided to intervene physically to stop the fight.
7. Robby Petiquay got up, left the area, and returned to the centre of the skating rink to look for another opponent. The victim was wearing his helmet. He did not want to fight; in fact, he can be seen declining another player’s invitation to fight. Robby Petiquay approached him quickly. Julien Gauthier did not have time to see him coming. Without stopping, Robby Petiquay hurled himself at him and violently hit him in the face with his fist. The victim lost his helmet and fell hard on to the skating rink. His attacker dropped onto him while grabbing him, but without hitting him again. Two linespersons then jumped on Mr. Petiquay. The scene is dreadful.
8. The crowd’s reaction can be heard in one of the videos filed into evidence. The crowd screamed and a horn rang out seconds after Robby Petiquay’s underhanded punch to the victim. Although this has nothing to do with Robby Petiquay, the images also show two players from the Loups de La Tuque attack a player from the opposing team and simultaneously hit him when he was already sprawled on the ice.
9. The act committed by Robby Petiquay against Julien Gauthier is very serious. It is a random act of extraordinary violence.

**The after-effects suffered by victim**

1. In every day life, Julien Gauthier’s trade is that of a tree trimmer. Like most players in this league, he has a full-time job and plays hockey for the pleasure of the sport. According to the evidence, the assault put an end to his hockey-playing activities. In addition to a laceration to his nose and a swollen eye, he suffered from headaches and dizzy spells.
2. He has lost 50% of his hearing in his left ear as a result of the hit. He had to be absent from work for almost a year. Since returning to work, he still has dizzy spells and headaches, a worrisome situation for a man whose trade primarily involves climbing trees and handling a chainsaw.
3. He no longer has the same level of energy as he did before. He is unable to resume physical training, an activity he did almost daily before the assault.
4. In sum, the consequences of the act committed by the offender against the victim are significant, even irreversible.

**The offender’s degree of responsibility**

1. In this regard, the defence argues that Robby Petiquay is not solely responsible. The Ligue de hockey senior AAA du Québec, the teams, and their staff should bear part of the responsibility for this incident. The defence is not completely wrong. Let me explain.
2. The evidence reveals that this same league had previously suspended Robby Petiquay in January 2016 for a similar act. In December 2017, the managers of the Loups de La Tuque wrote to the league’s authorities and asked that the suspension be lifted, which the league did. It was argued that Mr. Petiquay had good intentions, and the team then offered to deposit the amount of $1,250 to guarantee that Robby Petiquay [translation] “will not be suspended from two or more matches”.[[5]](#footnote-5)
3. As another consideration, the league’s disciplinarian wrote, [translation] “Considering that Simon Rizk’s court case has been dropped”. Mr. Rizk was Robby Petiquay’s victim in the 2016 incident.
4. The Court does not know if this sentence refers to civil legal proceedings, but one thing is certain, the criminal proceedings for that assault were never dropped. Robby Petiquay was convicted on May 11, 2017, of assault causing bodily harm against Simon Rizk, whom he hit on the head with a hockey stick during a hockey game. According to the evidence, he also ended this hockey-player’s career.
5. The written exchanges, filed in evidence under Pe-3, between the team and the league are silent on the subject, however. A simple verification by the league’s authorities would have uncovered these facts, and it would have shown that Robby Petiquay was on probation for a period of 18 months for that assault. He was still on probation at the time of the assault in this file.
6. Either the verifications made by the team and by the league were insufficient, or they had no impact on the decision to lift Mr. Petiquay’s suspension.
7. Why offer Robby Petiquay a contract? We know, and the accused acknowledges it, that it was not for his stickhandling or his skating skills. It was to fight. In the league’s jargon, he plays the role of “*policier*” ([translation] “enforcer”). Not only is this term poorly chosen, but also his role is not of someone who protects.
8. The hiring of fighters disguised as hockey players should be banned.
9. For example, there was a time when domestic violence was trivialized, and when intra-family sexual assault was not or not often reported, but society has since evolved. It is time to do the same for hockey fights.
10. The risk fights on the ice pose to the players is too great, and it is wrong to claim that they are part of the sport that is hockey.
11. Consider that, for some time now, wearing a helmet has been required when playing to protect the head; but, the players take it off during fights, it appears, to protect their hands. And, what is more, they take off their gloves. The fight takes place on an icy surface while they have blades on their feet. Grip to the ground is reduced. The risks posed not only by blows to the head, but also from falls and by the impact of the head hitting the ice, are considerable. The risk of bodily harm is clear, if not reasonably foreseeable.
12. While aware that this is not directly the issue in this case, in the Court’s view, the leagues should ban fights, and disciplinarians should punish offenders more severely.
13. Edmonson, J. of the Ontario Provincial Court wrote the following in *R. v. Watson*, (1975) 26 C.C.C. (2d) 150:

Hockey is a fast, vigorous, competitive game involving much body contact. Were the kind of body contact that routinely occurs in a hockey game to occur outside the playing area on the street, it would, in most cases, constitute an assault which the sanctions of the criminal law would apply. Patently when one engages in a hockey game, one accepts that some assaults which would otherwise be criminal will occur and consents to such assaults. It is equally patent, however, that to engage in a game of hockey is not to enter a forum to which the criminal law does not extend. To hold otherwise would be to create the hockey arena a sanctuary for unbridled violence to which the law of Parliament and the Queen's justice could not apply. I know of no authority for such a proposition.

1. The criminal law applies to all of society, and skating rinks are no exception. It applies both to individuals and to organizations.
2. Section 2 of the *Criminal Code*[[6]](#footnote-6)defines “organization” as follows:

**(a)** a public body, body corporate, society, company, firm, partnership, trade union or municipality, or

**(b)** an association of persons that

 **(i)** is created for a common purpose,

 **(ii)** has an operational structure, and

 **(iii)** holds itself out to the public as an association of persons;

1. And to those who would try to argue the notion of consent, the Supreme Court of Canada long ago explained that two adults cannot consent “intentionally to apply force causing serious hurt or non-trivial bodily harm to each other in the course of a fist fight or brawl”.[[7]](#footnote-7)
2. In ss. 21 and 22 of the *Criminal Code*,[[8]](#footnote-8) Parliament also specified the following:

**21 (1)** Every one is a party to an offence who

 **(a)** actually commits it;

**(b)** does or omits to do anything for the purpose of aiding any person to commit it; or

 **(c)** abets any person in committing it.

**(2)**  Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

**22 (1)** Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

**(2)** Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

**(3)** For the purposes of this Act, **counsel** includes procure, solicit or incite.

1. That humbly said, I believe that hockey fights, whether they are [translation] “concerted” or not, no longer have a place due to the too great risk they pose for the health and safety of the players and the risks of excess they entail. This case is a probative example of excess arising from a form of tolerance or trivialization of hockey violence.
2. Perhaps a sign that society is ripe for change, in a recent article titled “Le hockey en quête de tragédie”, Yves Boisvert wrote the following regarding violence in hockey in *La Presse*: [translation] “There will thus come a day ... when the courts will have to get involved*.* It will come after serious injuries to a player”.[[9]](#footnote-9)
3. In this case, the victim had the courage to seize the courts. I believe I must go a step further so that such acts do not happen again.
4. In the facts of this case, lifting Robby Petiquay’s suspension, hiring him for a role limited to jumping onto the ice to fight and the coach’s signal to [translation] “empty the benches”, setting off a general scuffle leading to the attack, are elements which lead this Court to conclude that the moral responsibility is not only Robby Petiquay’s; it is shared.
5. That said, Robby Petiquay must assume his share of the responsibility for the not only violent, but also gratuitous attack on Julien Gauthier.

**The offender’s profile**

1. Mr. Petiquay is 32 years old. He is an Aboriginal person from the Atikamekw Nation. He is from the Wemotaci community. He has lived in La Tuque for fifteen years with his spouse. They have four children. He is the sole provider for the family.
2. According to the “*Gladue*” report, Mr. Petiquay had a difficult childhood. He lived in a dysfunctional family environment where he experienced physical and verbal abuse as well as denigration. His parents’ alcoholism also had an impact on him.
3. As a youth, he discovered his brother, lifeless, following a suicide by firearm. This was a traumatic event for him, the effects of which he still feels today.
4. With respect to schooling, he completed Secondary II and left school when he was 15 years old. Later, he completed professional training in the field of construction, a field in which he still works today. His employer appreciates his work and wishes to continue to employ him.
5. At 15 years old, he began consuming marijuana on an almost daily basis. A few years later, he used hard drugs such as methamphetamines and cocaine. In 2017, he completed a therapy program at Centre Wapan and has since stopped using drugs and alcohol.
6. Mr. Petiquay is aware that he has anger management and violence problems. In fact, in 2018 and 2019, he participated in recovery and emotions management programs (the Miroskamin and Sekorimowin programs).
7. According to the author of the report, Robby Petiquay has no cultural identity. He wants to learn the Atikamekw way of life in the forest, trapping, hunting, and fishing, and to pass it on to his children.
8. It is appropriate to cite this excerpt from the “*Gladue*” report addressing the systemic, historical, and individual factors regarding Aboriginal persons that may have directly or indirectly contributed to the judicialization of the offender’s conduct:

 [translation]

Despite the fact that Robby Petiquay did not directly experience Aboriginal residential schools and other governmental assimilation measures, like other Aboriginal persons, it is likely that he is affected by intergenerational trauma.[[10]](#footnote-10)

1. This is to say that Robby Petiquay has been indirectly impacted by the trauma experienced by his parents and caused by Aboriginal residential schools. The violence and substance use in his childhood home, the denigration, the mistreatment he experienced, the uprooting of his community, and his drug use are all relevant “*Gladue*” factors that contributed to the commission of the offence.
2. Indeed, the offender has about ten criminal convictions.[[11]](#footnote-11) Among his convictions, he has two for assault causing bodily harm, one in 2017, discussed above, and the other in 2018. The accused was convicted of assault in 2007 and also of sexual assault in 2007. Thus, he is now facing his fifth conviction for violence against others.
3. The offender’s other prior convictions are mainly the result of failing to comply with court orders or obstructing peace officers.

**Similar sentences**

1. This principle is also called the principle of parity. It means that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.[[12]](#footnote-12)
2. This principle, however, must not impede the principle of proportionality of sentencing. They do not exist in tension. “[R]ather, parity is an expression of proportionality. A consistent application of proportionality will lead to parity”.[[13]](#footnote-13)
3. The sentences imposed in the context of hockey violence usually do not involve imprisonment. It must be said that is usually the offender’s first time before the court and, therefore, the offender has no prior convictions.
4. In several judgments, judges have granted absolute and conditional discharges.[[14]](#footnote-14) Others opted for a suspended sentence[[15]](#footnote-15) or a fine.[[16]](#footnote-16)
5. In more rare cases, a term of imprisonment was imposed. Such was the case in *Ciccarelli*,[[17]](#footnote-17) where the accused, a professional hockey player, was sentenced to one day of imprisonment and a fine of $1,000 for hitting a player from the opposing team three times in the head with his hockey stick.At paragraph 37 *et seq*., Harris, J. stated the following:

37 The game of hockey in which you participate is widely known as an activity or a sport that accepts violence as a fairly common-place activity, it may be that the fans have signified a great deal of acceptance for that sort of thing. Perhaps they resemble in that regard the crowds in the Roman Colosseum in days gone by.

38 Unfortunately, violence is becoming more and more an accepted part of daily life.

39 Particularly in the case of hockey players, who are an example to young people, violence lends a cachet of approval to violent conduct which spills over from the arena into the streets.

40 I am of the opinion that it is time now that a message has to go forth from the courts that unprovoked violence, whether in a hockey game or for that matter under any other circumstances, is not tolerated in our society. At the same time, of course, the penalty I impose has to be tailored to you and you can't be dealt with more severely than the present circumstances requires.[[18]](#footnote-18)

1. These remarks, made in 1988, clearly did not have the desired effect.
2. The following judgments are other examples where a term of imprisonment was imposed.
3. In *R. v. Opekokew*,[[19]](#footnote-19) the Court of Appeal for Saskatchewan allowed the appeal and imposed a sentence of 90 days’ imprisonment to be served intermittently on a hockey player who attacked the referee who wanted to eject him from the game. The accused cross-checked the victim in the face and then punched him in face. The victim suffered minor cuts and two broken teeth. The accused had two prior convictions for assault, but he had good support from his community.
4. In *R. v. Heeg*,[[20]](#footnote-20) the accused’s sentence was modified by the Court of Appeal for Saskatchewan to a sentence of 30 days’ imprisonment for having hit a player from the opposing team in the face with the blade of his hockey stick, fracturing his nose and giving him a large cut.The accused had no prior convictions for violent offences. The Court stated the following at paragraph 5 of the judgment:

This Court has said on many occasions that crimes of violence will be visited with a meaningful sentence. Conduct of this type is unacceptable whether in a hockey rink or on the street.

1. Authors Parent and Desrosiers wrote the following regarding assault causing bodily harm in *Traité de droit criminel*, Tome 3, “La peine”, at paragraph 609:

 [translation]

This category of offence is characterized by the accumulation of aggravating factors as well as by the priority given to the objectives of denunciation and deterrence. They are violent crimes committed by persons whose moral responsibility is particularly high. Punishable on summary conviction, assault causing bodily harm includes a constellation of aggravating factors generally giving rise to terms of imprisonment to be served in the community or not, with the possibility of a suspended sentence where justified by the circumstances.[[21]](#footnote-21)

1. Subject to certain comments made earlier on the moral responsibility of the offender, I believe that this is one of those situations where denunciation and deterrence must be prioritized and where the aggravating factors outweigh the mitigating factors, not in number, but in the weight to be given to them.
2. What are the aggravating and mitigating circumstances relating to the offence or the offender?[[22]](#footnote-22)

**The aggravating factors**

1. The Court accepts the following aggravating factors:
	1. The violence of the attack and its gratuitous and underhanded nature;
	2. The after-effects suffered by the victim, which are still felt today (partial loss of hearing, dizzy spells, headaches, absence from work for nearly a year, feeling of loss as a result of no longer being able to play hockey);
	3. The offender’s prior convictions, including four for crimes against the person, one of which was the 2017 conviction for a dealing a blow with a hockey stick during a hockey game;
	4. The accused was on probation when he committed the crime;
	5. The still present risk of recidivism, which, however, may be mitigated by the accused’s degree of participation in programs for the social reintegration of Aboriginal persons.

**The mitigating factors**

1. The Court accepts the following mitigating factors:
	1. Mr. Petiquay’s difficult childhood;
	2. The sincere remorse and regret expressed by Mr. Petiquay concerning the consequences of his act on the victim;
	3. A satisfactory sense of responsibility;
	4. The accused’s guilty plea, which means the victim did not have to testify;
	5. The distinctive systemic and historical factors as well as the intergenerational trauma that may have contributed to the commission of the offence;
	6. The mitigated and shared moral responsibility.

**The appropriate sentence**

1. For the purposes of sentencing, the factors of denunciation and of deterrence, both specific and general, must be considered. Mr. Petiquay must understand that resort to violence entailing significant consequences for the victim will not be tolerated.
2. In his case, the sentence imposed for his similar act committed in 2017 did not have the desired deterrent effect. In view of his four prior convictions for violent offences against others, the message must be unequivocal this time.
3. This message is also intended for the hockey players who would be tempted to engage in such acts of violence putting the health and safety of other players in danger. It is also intended for the various sporting organizations that should prohibit fights and better protect players against excesses like the one that occurred during the game that resulted in this offence.
4. I am of the opinion that it is appropriate to depart from the sentences imposed in the past for offences committed in the context of hockey; first, to emphasize society’s intolerance with respect to violence in sports, and second, to take into account the fact that the Court is imposing a sentence on a repeat offender.
5. For example, a similar blow, dealt at the exit of a bar by a repeat offender and resulting in similar consequences for the victim, would be severely punished, most likely by a term of imprisonment.
6. To a lesser degree, the protection of society also dictates that a term of imprisonment be imposed.
7. The objective of reintegration into society, however, must not be overlooked. Mr. Petiquay is a good worker and is liked by his employer. He has made several efforts over the last few years to free himself of his drug and alcohol addiction. He proposes to participate in therapeutic programs for Aboriginal persons to enable him to rediscover his cultural identity.
8. He is the father of four children and has a stable relationship and occupation.
9. He must, however, devote more effort to managing his anger, his impulsivity, and his aggression.
10. I find that a term of six months’ imprisonment would be justified in the circumstances of this case. However, it is appropriate to consider whether less restrictive sanctions may be imposed and, in particular, with respect to Aboriginal persons, whether other available sanctions, other than imprisonment, are reasonable.

**Less restrictive sanctions or other available sanctions**

1. In the past, the offender has benefited from suspended sentences, fines, and probationary measures such as donations or community work. Despite this, Mr. Petiquay has reoffended by committing a violent crime while he was on probation. In the circumstances, again imposing a sentence that would not deprive the offender of liberty, even taking into consideration the historical and systemic factors, would send the wrong message to the offender and to society. A sentence of imprisonment is necessary.
2. As for other available sanctions that are reasonable, a sentence of imprisonment to be served in the community appears to be the best course for the offender.[[23]](#footnote-23)
3. I am of the opinion that allowing him to serve his sentence in the community while imposing strict conditions will not endanger the safety of the community. Although the seriousness of the harm likely to arise from a repeat offence in crimes against the person may be significant, the conditions, be they punitive or curative, make this risk acceptable for society in the Court’s opinion.
4. This sentence respects the principles and purposes of sentencing.
5. Mr. Petiquay must be supervised and guided to prevent him from committing further acts of violence. However, the sentence of imprisonment in the community, which is a genuine sentence of imprisonment, will allow him to keep his job and see to his family’s needs. It will also allow the Court to maintain some control over him by imposing conditions on him directed at protecting the public, repairing the harm caused, and ensuring his reintegration into society.
6. This sentence also takes into account the overrepresentation of Aboriginal persons in prison.
7. In *Proulx*,[[24]](#footnote-24) the Supreme Court of Canada stated that a conditional sentence need not be of equivalent duration to the sentence of incarceration that would otherwise have been imposed.
8. For these reasons, the Court:
* **SENTENCES** the offender to serve a sentence of 9 months’ imprisonment in file 425-01-010376-199;
* **SENTENCES** the offender to serve a concurrent sentence of 3 months’ imprisonment in file 425-01-010377-199;
* **ORDERS** that these sentences be served in the community subject to the following compulsory and optional conditions:
* For the first three months of the order, he will be under 24-hour house arrest;
* For the next three months, he will be subject to a curfew between 9 p.m. and 6 a.m.;
* For the final three months, he will be subject to a curfew between midnight and 6 a.m.;

 The whole subject to the following exceptions:

* **Except** for the purposes of legitimate and paid employment,
* **Except** for meeting his supervisor or any other therapist with prior approval from his supervisor;
* **Except** once a week for a period of four hours to purchase goods and services necessary for life;
* **Except** for medical care for himself or his family members;
* **Except** to go to the Sûreté du Québec in La Tuque and provide the bodily samples deemed necessary for a forensic DNA analysis;
* **Except** to participate in Groupe Sokerimowin, the Centre d’amitié autochtone de La Tuque workshops, or the Moteskano and Tapiskwan activities;
* **Prohibits** the offender from possessing or using any drugs or alcohol;
* **Prohibits** the offender from playing hockey in the LHSAAAQ or any other professional or semi-professional league;
* The offender must follow all recommendations of the supervisor in connection with his violence, aggression, and impulsivity issues;
* **Prohibits** the offender from communicating, directly or indirectly, with Julien Gauthier and from being in his physical presence;
* **Prohibits** the offender from going to any place where Julien Gauthier may reside;
* The offender must have a telephone land line installed and answer all of the supervisor’s telephone calls during the curfew and or house arrest periods and take the necessary measures to do so;
* **ORDERS** the offender to subsequently submit to a probation order for a period of two years with supervision for a period of 18 months subject to the following compulsory and optional conditions:
* **Follow** all the recommendations of his probation officer in connection with his issues with violence, aggression, and impulsivity and also in connection with the re-appropriation of his cultural identity;
* **Participate** in meetings with Marcel Petiquay aimed at healing and the discovery of his cultural identity;
* **Participate** in the Monteskano and Tapiskwan cultural activities;
* **Abstain** from communicating, directly or indirectly, with Julien Gauthier and from being in his physical presence;
* **Abstain** from going to any place where Julien Gauthier may reside;
* **Abstain** from possessing or using any drugs or alcohol;
* **Abstain** from playing hockey in the LHSAAAQ or any other professional or semi-professional league;
* **AUTHORIZES** the taking of the number of samples of bodily substances from the accused that is reasonably required for the purpose of forensic DNA analysis.

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| * The whole, without costs and without victim surcharge.
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|  |
| **Mtre Éric Thériault** |
| Crown Prosecutor |
|  |
| **Mtre Denis Otis** |
| Counsel for the accused |
|  |
| Date of hearing: | June 16, 2021 |

1. Exhibit Pe-1. [↑](#footnote-ref-1)
2. *R. v. L.M.*,[2008] 2 SCR 163 at para. 17 [↑](#footnote-ref-2)
3. *Criminal Code*, s. 718.1. [↑](#footnote-ref-3)
4. *R*. *v.* *Ipeelee*, [2012] 1 SCR 433. [↑](#footnote-ref-4)
5. Exhibit Pe-3. [↑](#footnote-ref-5)
6. *Criminal Code*, R.S.C. (1985), c. C-46, s. 2. [↑](#footnote-ref-6)
7. *R*. *v*. *Jobidon*, [1991] 2 SRC 714 at 766. [↑](#footnote-ref-7)
8. *Criminal Code*, R.S.C. (1985), c. C-46, ss. 21 and 22. [↑](#footnote-ref-8)
9. Yves Boisvert, “Le hockey en quête de tragédie”, *Journal La Presse* (4 June 2021). [↑](#footnote-ref-9)
10. *Gladue* report at 12. [↑](#footnote-ref-10)
11. Exhibit Pe-2 [↑](#footnote-ref-11)
12. *Criminal Code,* R.S.C. 1985 c. C-46, s. 718.2(b). [↑](#footnote-ref-12)
13. *R*. *v*. *Friesen*, 2020 SCC 9 at para. 32. [↑](#footnote-ref-13)
14. *R*. *c*. *Mailhot*, 2018 QCCA 1772, *R*. *c*. *Blaquière*, 2012 QCCQ 362; *R*. *c*. *Roy*, 2009 QCCQ 13939; *R*. *v.* *Perezhogin*, [2005] O.J. No. 3205; *R*. *v.* *Bertuzzi*, 2004 BCPC 472; *R*. *v*. *McSorley*, 2000 BCPC 0117; *R*. *v*. *Caroll*, [1995] B.C.J. No. 365 (B.C.C.A.). [↑](#footnote-ref-14)
15. *R*. *c.* *Demers*, [1988] J.Q. no 1711 (C.A.); *R. v*. *Tropea*, 2010 ONCA 115. [↑](#footnote-ref-15)
16. *R*. *c*. *Régimbald*, B.E. 2004 BE-192 (Mun. Ct.); *R*. *c*. *Bourgeoise*, J.E. 2001-826 (Mun. Ct.); *R*. *c*. *Lamothe* [2000] J.Q. no 7010 (Mun. Ct.); *R*. *v.* *Hrehirchuk*, [1992] M.J. No. 430 (Man. C.A.); *R*. *v.* *Paul* [1989] M.J. No. 497 (Man. C.A.). [↑](#footnote-ref-16)
17. *R*. *v.* *Ciccarelli*, 1988 Carswell Ont 2396, 5 W.C.B. (2d) 310. [↑](#footnote-ref-17)
18. *Ibid* at paras. 37–40. [↑](#footnote-ref-18)
19. *R*. *v.* *Opekokew*, [1994] S.J. No.310 (Sask. C.A.). [↑](#footnote-ref-19)
20. *R*. *v.* *Heeg*, [1986] S.J. No. 760 (Sask C.A.). [↑](#footnote-ref-20)
21. Hugues Parent & Julie Desrosiers, *Traité de droit criminel*, t. 3, “La peine” at 805. [↑](#footnote-ref-21)
22. *Criminal Code,* R.S.C. 1985 c. C-46, s. 718.2(a) *Cr. C*. [↑](#footnote-ref-22)
23. *R*. *v*. *Proulx*, 2000 SCC 5 (CanLII), [2000] 1 SCR 61 at para. 94 [↑](#footnote-ref-23)
24. *R*. *v*. *Proulx*, [2000] 1 SCR 61 at para.127 [↑](#footnote-ref-24)